

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 06-02799 CW

JEROME L. GRIMES,

Plaintiff,

v.

RN ROBINSON, et al.,

Defendants.

ORDER GRANTING
REQUEST TO PROCEED
IN FORMA PAUPERIS,
REVIEWING AND
DISMISSING AMENDED
COMPLAINT

Plaintiff Jerome L. Grimes, a state prisoner incarcerated at San Francisco County Jail at the time of the events at issue,¹ filed this pro se civil rights complaint alleging that two public defenders who had represented him had obstructed justice, that Deputies Sanchez, Fields and Santiago violated his Eighth Amendment right to be free from excessive force, that another Deputy violated unspecified constitutional rights by placing him in administrative segregation, and that two inmates also violated unspecified constitutional rights. On February 1, 2007, the Court issued an Order Denying Without Prejudice Leave to Proceed In Forma Pauperis [and] Dismissing Complaint With Leave to Amend (February, 2007 Order) (Docket # 14).

¹On May 23, 2007, Plaintiff notified the Court that he was living at 263 Vernon Street, San Francisco, California.

1 In the February 1, 2007 Order, the Court dismissed without
2 leave to amend the claims against the two public defenders and the
3 two inmates on the ground that they are not state actors and, thus,
4 cannot be sued for a civil rights violation under 42 U.S.C. § 1983.
5 The Court dismissed with leave to amend Plaintiff's claim regarding
6 being placed in administrative segregation because he did not
7 allege who put him in administrative segregation nor did he allege
8 how this violated his constitutional rights. The Court dismissed
9 with leave to amend the claims against Defendants Robinson, Young
10 and Ficher on the ground that he had not stated any facts that
11 would support claims of constitutional violations against them.
12 The Court found that the excessive force claims against Defendants
13 Sanchez, Fields and Santiago were cognizable but that they could
14 not go forward because Plaintiff had not alleged facts which, if
15 proven, would establish that these Defendants applied force
16 "maliciously and sadistically to cause harm," rather than in a
17 good-faith effort to maintain or restore discipline.

18 On April 9, 2007, Plaintiff filed a First Amended Complaint
19 (FAC) (Docket # 17) alleging the following. On March 2, 2006,
20 Defendant RN Robinson did not immediately X-ray Plaintiff's right
21 injured elbow and "signaled inmate attack weapon, inmate Lamont
22 Rider to punch Plaintiff's jaw after [Robinson] bootlegged anti-
23 coagulated antibiotics pre-surgery terror piece-mell [sic] terror
24 and at least once sneaked into cell at night while Plaintiff slept
25 and taser gun immobilized and put acid in mouth to help pre-
26 fracture lower mandibular jaw bone. [sic]" On various days in
27 February, 2006, newly-named Defendant RN Litvinova refused
28

1 Plaintiff's pleas for X-rays and emergency medical treatment for a
2 fractured right elbow which was injured on February 15, 2006 and on
3 two nights, "sneaked into Plaintiff's cell and put acid in the
4 mouth, lower jaw area . . . to help pre-fracture lower mandibular
5 jaw bond, while, simultaneously, X26C taser gun back bar plumbing
6 area aim X26C blocking covert area . . . dog training device/taser
7 chip terror to keep Plaintiff semi-sleep immobilized with multiple
8 prior days of medical prescription drug poisoning/
9 tampering/bootlegging with anti-coagulate chemical warfare to cause
10 unstoppable bleeding during premeditated future resulting broken
11 jaw surgery death disguised as daily antibiotic distribution for
12 Plaintiff's tooth infection. . . ."

13 The FAC also alleges that, on or about February 10, 2006,
14 Defendant Deputy Sanchez moved Plaintiff from a "secure and stable"
15 cell to an "unsafe and unstable" cell which resulted in injury to
16 Plaintiff through the use of an inmate attack weapon. Defendant
17 Deputy Young also placed Plaintiff in an unsafe living condition in
18 disciplinary administrative segregation in a cell with another
19 inmate attack weapon. Defendant Deputy Fields told Plaintiff to
20 put on handcuffs while another inmate attack weapon was
21 unrestrained. Deputy Fields taser-gunned Plaintiff so that the
22 inmate attack weapon could attempt to hurt Plaintiff's eye with a
23 sharp homemade paperclip ring so that Plaintiff's cornea could be
24 smuggled to a covert hospital emergency room. Defendant Deputy
25 Santiago engaged in the same conduct as Defendant Fields.
26 Defendant Deputy Ficher was acting suspiciously and made an unsafe
27 condition of confinement. Defendant Deputy Kencade sneaked into
28

1 Plaintiff's cell at night, while Plaintiff slept, and dropped acid
2 drops into Plaintiff's mouth to help pre-fracture Plaintiff's lower
3 jawbone while simultaneously taser gunning Plaintiff. Defendants
4 Deputies Clayborn, Smith and Tek also put acid drops in Plaintiff's
5 mouth. Defendant Deputy Dupre threatened Plaintiff with physical
6 abuse because he said Plaintiff was talking too much. This attempt
7 to stop Plaintiff from talking was aided by Deputies Flores,
8 Calacug-Martin and Johnson.

9 Defendant Deputy Josif, while escorting Defendant RN Williams,
10 signaled an inmate attack weapon to punch Plaintiff's jaw.
11 Defendant Josif also sneaked into Plaintiff's cell at night, while
12 Plaintiff slept, and dropped acid drops into Plaintiff's mouth to
13 help pre-fracture his jaw bone and simultaneously taser-gunned
14 Plaintiff.

15 DISCUSSION

16 Because, in his original complaint, Plaintiff's allegations,
17 if taken as true, demonstrated that he was in imminent danger of
18 serious physical injury, the case was excepted from the 28 U.S.C.
19 § 1915(g) "three-strikes" provision, which the Court previously
20 found applies to Plaintiff. See C 00-1100 CW, Order Dismissing
21 Complaint, filed May 19, 2000.

22 In the February 1, 2007 Order, the Court allowed Plaintiff to
23 amend his claims against Defendants Sanchez, Fields, Santiago,
24 Robinson, Young and Ficher. The Court also allowed Plaintiff to
25 amend his allegation about being placed into administrative
26 segregation to state who put him in administrative segregation and
27 how that individual or individuals violated Plaintiff's

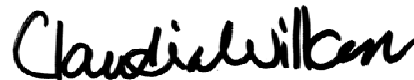
1 constitutional rights. In his FAC, Plaintiff names many new
2 Defendants. Because, with the exception of individuals who were
3 involved in Plaintiff's administrative segregation claim, the Court
4 did not allow Plaintiff to add new Defendants, all claims against
5 all newly named Defendants are dismissed.

6 In regard to the excessive force claim against Defendants
7 Sanchez, Fields and Santiago, the Court finds that the TAC, even
8 construed liberally, does not contain allegations that are
9 sufficient to state such claims. The Court similarly finds that
10 the FAC fails to contain allegations sufficient to state claims
11 against Robinson and Ficher. In regard to his administrative
12 segregation claim, Plaintiff alleges that Defendant Young violated
13 Plaintiff's constitutional rights by placing him in administrative
14 segregation because he was put in a cell with an "inmate attack
15 weapon." This allegation is insufficient to state a claim against
16 Defendant Young.

17 Therefore, Plaintiff's request to proceed in forma pauperis is
18 granted and his complaint is DISMISSED. The Clerk shall enter
19 judgment and close the file.

20
21 IT IS SO ORDERED.

22
23 Dated: 2/14/08



CLAUDIA WILKEN
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 JEROME L. GRIMES,

5 Plaintiff,

6 v.

7 R.N. ROBINSON et al,

8 Defendant.
9 _____/

Case Number: CV06-02799 CW

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
11 Northern District of California.

12 That on February 14, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
15 in the Clerk's office.

16 Jerome L. Grimes
263 Vernon St
San Francisco, CA 94132

17 Dated: February 14, 2008

18 Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk